IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2466 of 2007()

CC.164/2005 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED

SAMNATH, AGED 34 YEARS, S/O. SHAHUL HAMEED, SHAJEELA MANZIL, HARBOUR ROAD, VIZHINJAM P.O., TRIVANDRUM, KERALA.

BY ADV. SRI.M.SHYJU

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. K.G.SAIJU, RESIDING AT DAS SADANAM, KIDARAKUZHI, VENGANOOR P.O., THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ALONGWITH CRL.M.C.NOS. 2474,2469,2470 & 2468/2007 ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. Nos.2466, 2474,2469,
2470 &2468 Of 2007

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Dated this the 2nd day of August, 2007

ORDER

Petitioner faces indictment in separate prosecutions for the offences punishable, inter alia, under Sections 138 and 420 I.P.C. Prosecutions are pending before the courts of the Judicial First Class Magistrates at Trivandrum and Chief Judicial Magistrate Court, Thiruvananthapuram. According to the petitioner, he is absolutely innocent. Allegations are raised under Sec.138 of the Negotiable Instrument Act in some cases and Sec.420 IPC in the other. Consequent to non appearance of the petitioner before the learned Magistrate, warrants of arrest have been issued by the learned Magistrate to procure the arrest of the petitioner. The learned counsel for the petitioner submits that the petitioner is absolutely innocent of all allegations raised against him. The absence of the petitioner was not wilful, but was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. He is willing to co-operate with the court for the early and expeditious disposal of the case, but he apprehends that his application for bail may not be considered by the learned Magistrates

on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrates and explain to the learned Magistrates the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrates would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C. is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrates and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrates must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE